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**POWER SALES CONTRACT**

**BETWEEN**

**DELAWARE MUNICIPAL ELECTRIC CORPORATION**

**AND**

**CITY OF NEWARK, DELAWARE**

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## POWER SALES CONTRACT

This POWER SALES CONTRACT made and entered into as of \_\_\_\_, 2010, by and between DELAWARE MUNICIPAL ELECTRIC CORPORATION, a legal entity organized under the laws of the State of Delaware ("DEMEC") and CITY OF NEWARK, a political subdivision of the State of Delaware and member of DEMEC who has executed this Agreement (the "Project Participant").

WHEREAS, DEMEC is a municipal electric company incorporated in the State of Delaware, established by certain cities and towns, and formed pursuant to Chapter 13 of Title 22 of the Delaware Code (the "Act"); and

WHEREAS, DEMEC is authorized and empowered, among other things, (i) to plan, develop, acquire, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, improve and extend one or more electric projects (as defined in the Act); (ii) to issue its bonds, notes or other evidences of indebtedness to pay all or part of the costs of acquiring and developing such projects; and (iii) to exercise all other powers which may be necessary and convenient by DEMEC to effectuate the purposes of DEMEC; and

WHEREAS, DEMEC has determined to undertake a project consisting of the development, engineering, design and installation of a second generator at DEMEC's exiting Warren F. Beasley Power Station and all ancillary equipment necessary for the generation of up to an additional 67MW of nameplate capacity and certain other related capital improvements to benefit the Project Participant and certain other participating members of DEMEC; and

WHEREAS, DEMEC will take or cause to be taken all steps necessary for the acquisition and construction of those facilities and contractual arrangements and agreements described herein and designated as the Project for the supply of Electric Capacity and Electric Energy to the Project Participant and to the other Project Participants contracting with DEMEC therefor, and will sell the Electric Capacity and Electric Energy of the Project pursuant to this Power Sales Contract and pursuant to contracts substantially similar to this contract with such other Project Participants; and

WHEREAS, the acquisition and construction of the Project for the supply of Electric Capacity and Electric Energy to the Project Participant and the other Project Participants contracting with DEMEC therefor has been authorized by the Agreement and Articles of Incorporation, dated July 9, 1979 (the "Joint Action Agreement"); and

WHEREAS, in order to enable DEMEC to issue its bonds to pay the cost of acquiring and constructing the Project, it is necessary for DEMEC to have substantially similar binding contracts with the Project Participant and such other Project Participants purchasing Electric Capacity and Electric Energy of the Project and to pledge such contracts and the payments required to be made in accordance with such contracts as security for the payment of such bonds; and

WHEREAS, DEMEC and the Project Participant are duly authorized under applicable provisions of law, including but not limited to the Act, to execute, deliver and perform this Power Sales Contract and their respective governing bodies and any regulatory agencies having jurisdiction have taken all necessary actions and given all necessary approvals in order to constitute this Power Sales Contract a legal, valid and binding obligation of parties hereto;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and between the parties hereto as follows:

## **SECTION 1. Definitions and Explanations of Terms.**

As used herein:

Additional Facilities shall mean one or more of the following: (i) to the extent consistent with Prudent Utility Practices, any renewals, replacements, repairs, additions, betterments, modifications or improvements, necessary, in the opinion of the Consulting Engineer, to keep the Project or any portion thereof in good operating condition or to prevent a loss of revenues therefrom, (ii) any additions, improvements, repairs and modifications to the Project or any portion thereof and any retirement or disposal of the Project or any portion thereof required by any governmental agency having jurisdiction over the Project or any portion thereof, and (iii) any amounts relating to the Project which DEMEC is required to pay to any third party or parties by reason of any judgment or order of any court, commission, bureau, board or regulatory authority of competent jurisdiction; provided, however, that Additional Facilities shall not include additional generating units that would materially add to the generating capacity of the Project.

Annual Budget shall mean the budget adopted by the Board of DEMEC pursuant to paragraph (a) of Section 4 hereof which itemizes the estimated Monthly Power Costs and Monthly Transmission Costs for the following Contract Year, or, in the case of an amended Annual Budget adopted by the Board of DEMEC, during the remainder of a Contract Year, and the Project Participant's share, if any, of each.

Board shall mean the Board of Directors of DEMEC, acting in accordance with the Act, the Joint Action Agreement and the By-Laws of DEMEC.

Bonds shall mean the Bonds from time to time issued by DEMEC pursuant to the Indenture to pay any part of the Cost of Project, and shall include bond anticipation notes, additional Bonds and refunding Bonds issued in accordance with this Power Sales Contract and the Indenture.

Commercial Operation Date shall mean the date the Initial Facilities are producing and delivering Electric Capacity and Electric Energy for commercial use.

Consulting Engineer shall mean, as of any date, an engineer or engineering firm or corporation then retained by DEMEC pursuant to the Indenture to perform acts and carry out duties provided for such Consulting Engineer in the Indenture.

Contract Year shall mean the twelve (12) month period commencing at 12:01 a.m. on January 1 of each year, except that the first Contract Year shall commence on the Commercial Operation Date or [\_\_\_\_\_], whichever occurs first, and shall expire at 12:01 a.m. the next succeeding January 1.

Cost of Project shall mean, to the extent not included in Monthly Power Costs or Monthly Transmission Costs, all costs of planning, engineering, designing, financing, installing, constructing, acquiring, equipping and placing in operation or retirement or disposal of the Project, which shall include, but shall not be limited to, funds for:

- (1) interest accruing in whole or in part on Bonds prior to and during construction and for such additional period (not exceeding one year) as DEMEC may reasonably determine to be necessary;
- (2) the acquisition of fuel for the Project;
- (3) allowance for working capital requirements of the Project in such amounts as shall be deemed reasonably necessary by DEMEC;
- (4) the deposit or deposits required to be made under the Indenture from the proceeds of Bonds into any fund or account established pursuant to the Indenture to meet Debt Service reserve requirements for Bonds;
- (5) the deposit or deposits required to be made under the Indenture from the proceeds of Bonds into any fund or account established pursuant to the Indenture as a reserve for renewals, replacements and contingencies and retirement from service, salvage, discontinuance, sale or disposal of any facilities of the Project, including restoration of lands with respect thereto, or as a general or other reserve;
- (6) all costs and expenses relating to claims or judgments arising out of the acquisition, construction and operation of the Project;
- (7) all planning and development costs, engineering fees, contractors' fees, costs of obtaining governmental or regulatory permits, licenses and approvals, costs of real property, labor, materials, equipment, supplies, training and testing costs, insurance premiums, legal and financing costs, administrative and general costs, and all other costs properly allocable to the acquisition, development, construction and equipping of the Project and placing the same in operation;
- (8) all costs and expenses relating to injury and damage claims arising out of the acquisition, construction and operation of the Project;
- (9) the costs and expenses, including discounts to the underwriters or other purchasers thereof, if any, incurred in the issuance and sale of bonds, notes or other evidences of

indebtedness from time to time issued, the proceeds of which have been or will be required to be applied to one or more purposes for which Bonds could be issued;

(10) payments to DEMEC or any Project Participant to reimburse advances and payments made or incurred for costs preliminary or incidental to the acquisition, development, construction or equipping of the Project; and

(11) the payment of principal, premium, if any, and interest when due (whether at the maturity of principal or at the due date of interest or upon redemption) on notes or other evidences of indebtedness from time to time issued in anticipation of the issuance of Bonds, the proceeds of which have been or will be required to be applied to one or more purposes for which Bonds could be issued.

Debt Service shall mean, with respect to any period, the aggregate of the amounts required by the Indenture to be paid or deposited during said period into any fund or account created by the Indenture for the sole purpose of paying the principal (including sinking fund installments) of, premium, if any, and interest on all Bonds from time to time outstanding as the same shall become due; provided, however, that Debt Service shall not include any amount payable as principal or interest solely as a result of acceleration of maturity of Bonds.

Electric Capacity shall mean the capability to generate and supply Electric Energy, expressed as kilowatts (kW).

Electric Energy shall mean electric energy generated and supplied, expressed as kilowatt hours (kWh).

Fuel Costs shall mean all costs incurred by DEMEC during a period that are allocable to the acquisition, processing, transportation, delivering and storage of natural gas or other fuel source required for the Project, including working capital there for.

Indenture shall mean the Trust Indenture between DEMEC and the Trustee pursuant to which the Bonds are issued and secured, as amended or supplemented from time to time in accordance with its terms.

Initial Facilities shall mean DEMEC's second combustion/turbine generator at DEMEC's existing Warren F. Beasley Power Station and all ancillary equipment necessary to generate up to an addition 67 MW of nameplate capacity, as more particularly described in the Independent Engineer's Report prepared by Sargent & Lundy.

MW shall mean 1,000 kilowatts.

Month shall mean a calendar month.

Monthly Power Costs shall mean, with respect to each Month of each Contract Year, all costs (other than Monthly Transmission Costs) attributable to the Project, to the extent not paid from the proceeds of Bonds or notes (including income from investment of such proceeds) and

less any amounts available in the Rate Stabilization Account for the payment of Monthly Power Costs established in prior periods (including income from investment of reserves) which are to be applied in accordance with the then current Annual Budget to the payment of Monthly Power Costs in such Month, that are paid or incurred by DEMEC during such Month resulting from the ownership, operation, maintenance, termination and retirement from service of, and repairs, renewals, replacements, additions, improvements, betterments and modifications to, the Project, including without limitation, the following items of cost:

(1) the amount required under the Indenture to be paid or deposited during such Month into any fund or account established by the Indenture for the payment of Debt Service on Bonds;

(2) the amount required under the Indenture to be paid or deposited during such Month into any fund or account established by the Indenture (other than funds and accounts referred to in clause (1) above), including any amounts required to be paid or deposited by reason of the transfer of moneys from such funds or accounts to the funds or accounts referred to in clause (1) above;

(3) any amount which DEMEC may be required during such Month to pay for the prevention or correction of any unusual loss or damage or for renewals, replacements, repairs, additions, improvements, betterments and modifications which are necessary to keep the Project in good operating condition or to prevent a loss of revenues therefrom, but in each case only to the extent that (a) funds for such payment are not available to DEMEC from any funds or accounts established under the Indenture for such purpose or (b) funds for such payment are not provided by the issuance of Bonds;

(4) the costs of operating and maintaining the Project and of producing Electric Capacity and Electric Energy therefrom during such Month (including administrative and general expenses, working capital, taxes or payments in lieu thereof and Fuel Costs and user charges for such month which Fuel Costs and user charges are payable whether or not Electric Capacity and Electric Energy is produced by the Project), not included in the costs specified in the other items of this definition and properly chargeable to the Project and an equitably allocated portion of DEMEC's general and administrative expenses which are not properly chargeable to any specific project of DEMEC;

(5) all costs incurred or associated with the discontinuance and disposition or sale of properties required to be paid by DEMEC with respect to the Project (whether or not in connection with the issuance of a final accounting statement referred to in Section 13) including, but not limited to, all of DEMEC's accrued costs and liabilities resulting from DEMEC's ownership, acquisition, construction, operation, maintenance and renewals and replacements of the Project;

(6) all costs and expenses relating to injury and damage claims required to be paid by DEMEC in connection with the operation of the Project;



(7) any additional amount not specified in the other items of this definition (excluding Monthly Transmission Costs) which must be paid by DEMEC during such Month with respect to the Project or any other costs incurred by DEMEC during such Month relating to the Project (including any amounts to be paid into the Rate Stabilization Account established by DEMEC for the payment of Monthly Power Costs in future Months) which are not otherwise included in any of the costs specified herein; and

(8) any additional amount which must be realized by DEMEC during such Month in order to meet the requirement of any rate covenant of the Indenture with respect to Debt Service coverage or which DEMEC deems advisable in the marketing of its Bonds.

Monthly Transmission Costs shall mean, with respect to each Month of each Contract Year, all costs attributable to the transmission and delivery pursuant to the Power Sales Contracts of Electric Capacity and Electric Energy to the Project Participants' Points of Delivery under any transmission contracts, transmission agreements and transmission arrangements.

Net Electric Capacity and Energy shall mean the gross electric capability, and associated Electric Energy, of the Project less the associated Electric Energy utilized by the Project for all processes, auxiliary equipment and systems used or useful in connection with start-up, operation, maintenance, control, supply or shutdown of the Project, including appropriate station service transformer losses.

Operating and Scheduling Procedures means those standards, procedures and criteria consistent with Prudent Utility Practice determined by DEMEC from time to time with respect to the operation of the Project and the scheduling of the generation of Electric Energy which shall, to the extent practicable, promote the efficient and economic utilization of the Project for the benefit of the Participants taken as a whole.

PSC shall mean Public Service Commission, a statutory commission under the laws of the State of Delaware and its successors and assigns.

Point of Delivery shall mean Clayton G2 in DPL Zone or such other point or points of delivery from time to time agreed to between the Project Participant and DEMEC.

Power Entitlement Share shall mean, with respect to each Project Participant, that percentage of Project Capability shown opposite the name of such Project Participant in the Schedule of Project Participants as the same may be adjusted from time to time in accordance with the provisions hereof.

Power Sales Contracts shall mean this Power Sales Contract and the other Power Sales Contracts, dated the date hereof, between DEMEC and the other Project Participants, all relating to the Project, as the same may be amended from time to time, and any substantially similar contract entered into by DEMEC in connection with any transfer of a Project Participant's Power Entitlement Share pursuant to Section 19, any assignment of such Power Entitlement Share pursuant to paragraph (c) of Section 28 or any assignment of such Power Entitlement Share with the consent of DEMEC in accordance with paragraph (a) of Section 28.

Project shall mean the Initial Facilities, the Additional Facilities and related contractual arrangements and agreements including arrangements and agreements for the transmission of Electric Capacity and Electric Energy.

Project Capability shall mean the amount of Net Electric Capacity and Energy, if any, which the Project is capable of generating at any particular time (including times when the Project is not operable or operating or the operation thereof is suspended, interrupted, interfered with, reduced or curtailed, in each case in whole or in part for any reason whatsoever).

Project Participants shall mean the parties, including the Project Participant, other than DEMEC, to Power Sales Contracts substantially similar hereto.

Project Participant's Representative shall mean the officer, employee or other agent of the Project Participant designated from time to time by the Project Participant as the Representative of the Project Participant for purposes of this Power Sales Contract, to whom all notices and other communications to be given by DEMEC to the Project Participant hereunder shall be sent.

Prudent Utility Practice shall mean, as of any particular time, any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry at such time, or which, in the exercise of reasonable judgment in light of facts known at such time, could have been expected to accomplish the desired results at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others or to be limited to the lowest-cost practice, method or act, but rather to be a spectrum of possible practices, methods and acts, having due regard for manufacturers' warranties and the jurisdiction.

Rate Stabilization Account shall mean the account of that name established by the Indenture.

Regional Transmission Authority shall mean the PJM Interconnection Association, LLC, or any duly authorized successor organization having control over the regional transmission system.

Schedule of Project Participants shall mean the Schedule of Project Participants contained in Annex 1 hereto, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

Transmission Services shall mean, with respect to each Project Participant, any provisions for the transmission and delivery of such Project Participant's Power Entitlement Share to its Point or Points of Delivery, as may be determined from time to time, pursuant to any transmission contracts, transmission agreements or other transmission arrangements and for the dispatching and scheduling, if any, of such Power Entitlement Share, if any.

Trustee shall mean the bank or trust company acting as trustee under the Indenture.

## **SECTION 2. Term of Contract.**

This Power Sales Contract shall become effective upon execution and delivery of Power Sales Contracts by all Project Participants originally listed in the Schedule of Project Participants and by DEMEC and shall, unless this Power Sales Contract is terminated pursuant to Section 29 hereof, continue until the latest of (i) the date the principal of, premium, if any, and interest on all Bonds have been paid or funds set aside for the payment thereof, or (ii) the date Project is finally disposed of by DEMEC as an electric generating unit. Neither termination nor expiration of this Power Sales Contract shall affect any accrued liability or obligation hereunder. Notwithstanding the foregoing, in the event it is ultimately determined that any other Project Participant failed to duly and validly execute and deliver its Power Sales Contract, or if any other Power Sales Contract, or any portion thereof, shall be deemed invalid or unenforceable for any other reason whatsoever, such determination shall in no way affect the commencement, term or enforceability of this Power Sales Contract or the Project Participant's obligations hereunder, and in such event the Power Entitlement Share of the Project Participant whose Power Sales Contract is determined to be invalid or unenforceable shall be transferred to the remaining Project Participants or others in accordance with the provisions of Section 19 hereof.

## **SECTION 3. Development of Project; Sale and Purchase of Power Entitlement Share.**

(a) DEMEC shall use its best efforts to complete the development, acquisition, construction and equipping of the Project and to finance the Costs of Project through the issuance of Bonds or other obligations of DEMEC. DEMEC may issue bond anticipation notes or other obligations to finance all or a portion of the costs incurred in its development of the Project, including any item of the Cost of Project. The Participant and DEMEC understand and agree that there can be no assurance that DEMEC will be successful in its efforts to develop and complete the Project.

(b) In the event that DEMEC is successful in its efforts to complete the Project, DEMEC agrees to and does hereby sell, and the Project Participant agrees to and does hereby purchase, the Project Participant's Power Entitlement Share and the Project Participant's Transmission Services. The Project Participant shall, in accordance with and subject to the provisions of Section 4 hereof, pay DEMEC (i) for its Power Entitlement Share, an amount determined by multiplying Monthly Power Costs by the Project Participant's Power Entitlement Share, and (ii) all costs described in the definition of Monthly Transmission Costs which are properly allocable, as reasonably determined by DEMEC, to the Project Participant.

(c) In the event that DEMEC is not successful in its efforts to develop and complete the Project for whatever reason, DEMEC will give notice to each of the Project Participants. DEMEC will then make a final accounting of all costs and expenses incurred by it with respect to its development of the Project. To the extent such costs and expenses exceed the amounts previously advanced to DEMEC in support of the Project by the Project Participants, DEMEC may bill to and collect from each Project Participant an amount equal to the product of the

Project Participant's Power Entitlement Share and such excess costs and expenses, including any amount necessary to retire the Bonds or any bond anticipation notes. DEMEC will use its best efforts to wind up all matters relating to the Project as promptly as practicable following its determination that it will not be able to complete the Project.

#### **SECTION 4. Method of Payment.**

(a) On or before the estimated commencement of the first Contract Year and on or before December 1 prior to the beginning of each Contract Year thereafter, the Board of DEMEC shall adopt and mail or deliver to the Project Participant an Annual Budget for the Contract Year which shall provide an estimate of the Project Participant's monthly payments hereunder and serve as a basis for Project Participant's payments hereunder for Monthly Power Costs and Monthly Transmission Costs for such Contract Year. During each Contract Year, the Board shall review its Annual Budget for the remainder of the Contract Year at the end of each calendar quarter during each Contract Year and at such other time as it shall deem desirable. In the event such or any other review indicates that such Annual Budget will not substantially correspond with actual Monthly Power Costs or actual Monthly Transmission Costs properly allocable to each Project Participant, as determined by DEMEC, or if at any time during such Contract Year there are or are expected to be extraordinary receipts, credits or costs substantially affecting the Monthly Power Costs or Monthly Transmission Costs, the Board of DEMEC shall adopt and mail or deliver to each Project Participant an amended Annual Budget applicable to the remainder of such Contract Year which shall provide an estimate of the Project Participant's monthly payments hereunder for the remainder of such Contract Year and serve as the basis for the Project Participant's monthly payments for Monthly Power Costs and Monthly Transmission Costs hereunder for the remainder of such Contract Year.

(b) On or before the 10th day of each Month beginning with the second Month of the first Contract Year, DEMEC shall render to the Project Participant a monthly statement showing, in each case with respect to the prior Month, (i) the amount payable by the Project Participant in respect of Monthly Power Costs, as shown in the Annual Budget for such Contract Year or in an amended Annual Budget for the remainder of the Contract Year containing such Month; (ii) the amount payable by the Project Participant in respect of Monthly Transmission Costs properly allocable to such Project Participant, as shown in the Annual Budget for such Contract Year or in an amended Annual Budget for the remainder of the Contract Year containing such Month; (iii) the amount, if any, determined in accordance with paragraph (f) of this Section 4 to be credited to or paid by the Project Participant with respect to any adjustment for actual Monthly Power Costs or actual Monthly Transmission Costs incurred during the next preceding Contract Year; (iv) the credits, if any, against the Project Participant's share of Monthly Power Costs determined in accordance with paragraph (h) of this Section 4; and (v) any other amounts (except amounts in respect of Monthly Power Costs and Monthly Transmission Costs, which amounts are intended to be billed exclusively pursuant to clauses (i) and (ii), respectively) payable by or credited to such Project Participant pursuant to this Power Sales Contract or the Indenture not otherwise shown; and such Project Participant shall pay the total of such amounts at the times specified in paragraph (c) of this Section 4.

(c) Monthly payments required to be paid to DEMEC pursuant to this Section 4 shall be due and payable to DEMEC at the principal office of DEMEC, or such other address as DEMEC shall designate in writing to the Project Participant, on the 25th day of the Month in which the monthly statement was rendered.

(d) If payment in full is not made on or before the close of business on the due date, a delayed-payment charge on the unpaid amount due for each day overdue will be imposed at a rate equal to the annual percentage prime rate of interest being charged on such day for 90-day loans to substantial and responsible borrowers by the Trustee under the Indenture, plus 2%, or the maximum rate lawfully payable by the Project Participant, whichever is less. If said due date is Saturday, Sunday or a holiday, the next following business day shall be the last day on which payment may be made without the addition of the delayed-payment charge.

(e) In the event of any dispute as to any portion of any monthly statement, the Project Participant shall nevertheless pay the full amount of the disputed charges when due and shall give written notice of the dispute to DEMEC not later than the date such payment is due. Such notice shall identify the disputed bill, state the amount in dispute and set forth a full statement of the grounds on which such dispute is based. No adjustment shall be considered or made for disputed charges unless notice is given as aforesaid. DEMEC shall give consideration to such dispute and shall advise the Project Participant with regard to its position relative thereto within thirty (30) days following receipt of such written notice. Upon final determination (whether by agreement, arbitration, adjudication or otherwise) of the correct amount, any difference between such correct amount and such full amount shall be properly reflected in the statement next submitted to the Project Participant after such determination.

(f) On or before one hundred twenty days after the end of each Contract Year, and at such other times as it shall deem desirable, DEMEC will submit to the Project Participant a detailed statement of the actual aggregate Monthly Power Costs and Monthly Transmission Costs and any adjustment thereof or credit thereto pursuant to paragraph (h) of this Section 4 and the Project Participant's share of each, and all other amounts, if any, payable by or credited to the Project Participant pursuant hereto for all of the Months of such Contract Year or for such number of months as DEMEC deems appropriate, and adjustments of the aggregate Monthly Power Costs and Monthly Transmission Costs, if any, for any prior Contract Year and any adjustment thereof or credit thereto pursuant to paragraph (h) of this Section 4 allocable to the Project Participant, based on the annual audit of accounts provided for in Section 10 hereof or, if for a period other than a full Contract Year, on such other information as DEMEC deems reliable. If, on the basis of the statement submitted as provided in this paragraph (f), the actual aggregate Monthly Power Costs and Monthly Transmission Costs and any adjustment thereof or credit thereto pursuant to paragraph (h) of this Section 4 allocable to the Project Participant and other amounts payable for any Contract Year exceed the estimate thereof on the basis of which the Project Participant has been billed, the amount of such deficiency shall be divided into six, or fewer, as determined by the Board of DEMEC in its sole discretion, equal installments and added to the Project Participant's monthly statement for each of the next succeeding six or fewer months, as appropriate, as provided in clause (iii) of paragraph (b) of this Section 4. If, on the basis of the statement submitted pursuant to this paragraph (f), the actual aggregate Monthly Power Costs and Monthly Transmission Costs and any adjustment thereof or credit thereto

pursuant to paragraph (h) of this Section 4, and other amounts payable for any Contract Year are less than the estimate therefor on the basis of which such Project Participant has been billed, the amount of such excess shall be divided into six, or fewer, as determined by the Board of DEMEC in its sole discretion, equal installments and credited to the Project Participant's monthly statement for each of the next succeeding six or fewer months, as appropriate, as provided in clause (iii) of paragraph (b) of this Section 4.

(g) The obligation of the Project Participant to make the payments under this Section 4 for its share of Monthly Power Costs, Monthly Transmission Costs and other amounts shall constitute an obligation of the Project Participant payable as an operating expense of the Project Participant's electric utility system payable solely from the revenues and other available funds of its electric utility system. In no event shall the Project Participant be required to make payments hereunder from tax revenue. The Project Participant shall be obligated to make payments hereunder irrespective of whether energy is produced or delivered to the Project Participant or whether the Project is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the output of the Project, and shall not be subject to any reduction, whether by offset, counterclaim, or otherwise, and shall not be otherwise conditioned upon performance by DEMEC under this or any other agreement or instrument or the validity or enforceability of any other Power Sales Contract, or any other agreement between DEMEC and any other Project Participant. Except as otherwise expressly provided in the first sentence of this Section 4(g), the obligation of the Project Participant to make payments under this Section 4 shall not constitute a debt of the Project Participant within the meaning of any constitutional or statutory provision or limitation or a general obligation of or pledge of the full faith and credit of the Project Participant, and neither the Project Participant nor the State of Delaware or any agency or political subdivision thereof shall ever be obligated or compelled to levy ad valorem taxes to make the payments provided for in this Section 4, and the obligation of the Project Participant to make payments pursuant to this Section 4 shall not give rise to or constitute a lien upon any property of the Project Participant or any property located within its boundaries or service area.

(h) Subject to the provisions of the Indenture, DEMEC shall apply as a credit against Monthly Power Costs interest earned on investments held under the Indenture and all proper credits against the Cost of Project, including, without limitation, all receipts, revenues and other monies to the extent received by DEMEC or credited to it from insurance proceeds, condemnation awards, damages collected from contractors, subcontractors or others and proceeds from the sale or other disposition of surplus property, all related to the Project, in each case, to the extent not credited against the Cost of Project.

## **SECTION 5. Scheduling of Deliveries.**

From and after completion of the Project, and subject to the Project Participant's obligation under the Wholesale Electric Service Agreement, the Project Participant shall be entitled to receive Electric Capacity and Electric Energy to which the Project Participant is entitled under this Power Sales Contract. DEMEC shall schedule or cause to be scheduled such Electric Energy in accordance with the Operating and Scheduling Procedures. DEMEC shall

provide the Participant with notice of any amendment to or modification of the Operating and Scheduling Procedures.

DEMEC may appoint an agent from time to time to dispatch the output of the Project to the Project Participants' Points of Delivery. The agent shall schedule and dispatch output of the Project in accordance with the Operating and Scheduling Procedures, and DEMEC shall provide the agent with any and all information needed by the agent in order to carry out its dispatch function.

#### **SECTION 6. Point of Delivery.**

Electric Capacity and Electric Energy will be delivered at the Point of Delivery. Such deliveries will be properly adjusted for transmission losses incurred between the point of output and the Point of Delivery over the transmission systems in Delaware, as provided in the existing transmission service agreement between the Project Participant and the transmission service provider, or any future transmission agreement which supersedes such agreement.

The Project Participant shall be responsible for delivery of Electric Capacity and Electric Energy from the Point of Delivery.

#### **SECTION 7. Reactive Power.**

Unless otherwise mutually agreed by DEMEC and the Project Participants, the Project Participants shall provide the reactive power requirements of their respective electric systems and shall supply any reactive power required to maintain the power factor of the power delivered by DEMEC to the individual Project Participant's Point or Points of Delivery as near unity as practical, except as otherwise may be arranged from time to time between DEMEC and the Project Participant due to the then existing conditions. The Project Participant will be responsible for any costs associated with DEMEC or its agent having to maintain a required power factor under agreements with other electric systems.

#### **SECTION 8. Availability of Entitlement Shares.**

Except as provided otherwise by this Power Sales Contract, and subject to the provisions of any applicable transmission contracts, transmission agreements or other transmission arrangements relating to the Project, the Project Participant's Power Entitlement Share shall be made available in accordance with this Power Sales Contract during the term of this Power Sales Contract.

#### **SECTION 9. Insurance.**

Subject to the provisions of the Indenture, DEMEC shall maintain, or cause to be maintained, in force, as part of the Cost of Project, Monthly Power Costs or Monthly Transmission Costs, as appropriate, insurance with responsible insurers with policies, payable to DEMEC or the Trustee as their interests shall appear and naming the Project Participants as additional insureds, against risk or direct physical loss, damage or destruction of the Project, at

least to the extent that similar insurance is usually carried by utilities constructing and operating electric generation facilities and transmission facilities of the nature of the generation and transmission facilities of the Project, including liability insurance and employers' liability, all to the extent available at reasonable cost but in no case less than will satisfy all applicable regulatory requirements.

#### **SECTION 10. Accounting.**

DEMEC agrees to keep (and retain for at least five years) accurate records and accounts relating to the Project and relating to Monthly Power Costs and Monthly Transmission Costs and the administration of this Power Sales Contract, in accordance with this Power Sales Contract and the Indenture, separate and distinct from its other records and accounts, and to make such records available to the Project Participant upon reasonable request. Said accounts shall be audited annually, which audit may be conducted as part of and in connection with the normal year-end audit of DEMEC, by a firm of certified public accountants, experienced in public finance and electric utility accounting and of national reputation, to be employed by DEMEC. A copy of each annual audit, including all written comments and recommendations of such accountants, shall be furnished by DEMEC to the Project Participant not later than 180 days after the end of each Contract Year.

The Project Participant agrees to keep accurate records and accounts relating to the conduct of its business and shall supply to DEMEC not later than 180 days after the end of each fiscal year, or at such later date as may be agreed to by DEMEC upon the written request of the Project Participant, a copy of the annual audit of such records and accounts certified by a firm of certified public accountants, experienced in electric utility accounting.

#### **SECTION 11. Information to be Made Available.**

(a) DEMEC will prepare and issue to the Project Participants the following reports each Month of the Contract Year:

- (1) financial and operating statement relating to the Project,
- (2) status of the Project annual budget,
- (3) status of construction budget of the Project during construction, and
- (4) monthly operating statistics relating to the Project;

(b) The Project Participant acknowledges that the ability of DEMEC to sell the Bonds depends upon, among other things, the credit standing of the Project Participants and their electric systems and that it will be necessary for DEMEC to provide certain information with respect to the Project Participants and their electric systems in connection with the sale of the Bonds. Consequently, the Project Participant covenants to and agrees with DEMEC that the Project Participant will, upon request, provide to DEMEC all information with respect to the Project Participant and its electric system, including financial and operating information and all



contracts, documents, reports, bond resolutions and indentures, as may be requested by DEMEC or its counsel in connection with the financing of the Project and the issuance of the Bonds.

(c) The Project Participant covenants to and agrees with DEMEC that the Project Participant will furnish to DEMEC (1) concurrently with its execution and delivery of this Power Sales Contract and not later than 180 days after the end of each fiscal year of the Project Participant, (A) a copy of the most recent annual financial statements of the Project Participant and its electric enterprise fund, audited by an independent certified public accountant or firm of such accountants, together with copies of all management letters and written recommendations and comments submitted by the accountants making such audit, and (B) the information and documents described in Annex 2 attached hereto, and (2) such other information and documents as DEMEC may reasonably request from time to time, including any information necessary for DEMEC to comply with its disclosure obligations under any continuing disclosure agreement entered into by DEMEC in connection with the issuance of the Bonds.

(d) Concurrently with its execution and delivery of this Power Sales Contract, the Project Participant shall deliver to DEMEC (1) a certificate, executed by the Mayor, Town/City Clerk or Secretary of the Project Participant, as applicable, together with attached exhibits, in substantially the form attached hereto as Annex 3 and (2) an opinion of counsel to the Project Participant, in substantially the form attached hereto as Annex 5. Concurrently with each issuance of Bonds or bond anticipation notes by DEMEC, the Project Participant shall deliver to DEMEC (1) a bring-down certificate executed by the Mayor or other executive officer of the Project Participant and the Town/City Clerk or Secretary of the Project Participant, in substantially the form attached hereto as Annex 4, and (2) a bring-down opinion of counsel to the Project Participant, in substantially the form attached hereto as Annex 6. It is acknowledged by the Project Participant the certificates and opinions delivered by the Project Participant may differ from those delivered by the other Project Participants pursuant to their Power Sales Contracts.

## **SECTION 12. Additional Bonds and Refunding Bonds.**

(a) Additional Bonds may be sold and issued by DEMEC in accordance with the provisions of the Indenture at any time and from time to time in the event, for any reason, the proceeds derived from the sale of Bonds prior to such time shall be insufficient for the purpose of paying the Cost of Project with respect to the Initial Facilities.

(b) Additional Bonds may be sold and issued by DEMEC in accordance with the provisions of the Indenture at any time and from time to time in the event funds are required to pay all or a portion of the Cost of Project with respect to any Additional Facilities to the extent that sufficient funds are not available therefor in any Fund or Account under the Indenture.

(c) Any such additional Bonds shall be secured by the pledge made pursuant to the provisions of Section 16 hereof of this Power Sales Contract and of the payments required to be made by the Project Participant under Section 4 of this Power Sales Contract and all other payments attributable to the Project to be made in accordance with or pursuant to any other provision of this Power Sales Contract, as such payments may be increased and extended by

reason of the issuance of such additional Bonds, and such additional Bonds may be issued in amounts sufficient to pay the full amount of such costs referred to in clause (a) or (b) above and to provide such reserves as may be reasonably determined by DEMEC to be desirable. Any such additional Bonds issued in accordance with the provisions of this Section 12 and secured by the pledge of payments to be made in accordance with the provisions of this Section 12 may rank *pari passu* as to the security afforded by the provisions of this Power Sales Contract with all Bonds theretofore issued pursuant to and secured in accordance with the provisions of this Power Sales Contract or the Indenture.

(d) In the event Monthly Power Costs may be reduced by the refunding of any Bonds then outstanding or in the event it shall otherwise be advantageous, in the opinion of DEMEC, to refund any Bonds, DEMEC may issue and sell refunding Bonds in accordance with the Indenture to be secured by the pledge made pursuant to the provisions of Section 16 hereof of this Power Sales Contract and of the payments required to be made by the Project Participant under Section 4 of this Power Sales Contract and all other payments attributable to the Project to be made in accordance with or pursuant to any other provision of this Power Sales Contract. Any such refunding Bonds issued in accordance with the provisions of this Section 12 and secured by the pledge of such payments may rank *pari passu* as to the security afforded by the provisions of this Power Sales Contract with all Bonds theretofore issued pursuant to and secured in accordance with the provisions of this Power Sales Contract.

### **SECTION 13. Disposition or Termination of the Project.**

If the Project shall never be placed in service or shall be permanently removed from service and DEMEC determines after consultation with the Project Participants to dispose of or terminate the Project, DEMEC shall use its best efforts to cause the Project to be economically salvaged, discontinued, disposed of or sold in whole or in part. The costs of salvage, discontinuance or disposition shall include, but shall not be limited to, all accrued costs and liabilities resulting from the construction, operation (including cost of fuel), maintenance of and renewals and replacements to the Project. DEMEC shall, after the Project has been finally salvaged or disposed of, give each Project Participant a final accounting statement which shall, if all Bonds have been paid in full or provision for such payments shall have been made in accordance with the provisions of the Indenture, credit to the Project Participant, and deduct from any amount otherwise chargeable to it, the Project Participant's share of the fair value of any disposable assets related to the Project then voluntarily retained by DEMEC. If any such final accounting statement shows that the costs referred to above exceed such credits after application by DEMEC of all available funds held under the Indenture for such purpose, the Project Participant shall pay DEMEC the amount shown to be due by such final accounting statement as an adjustment to previously paid Monthly Power Costs. If any such final accounting statement shows that the costs referred to above are less than such credits after application by DEMEC of all other available funds held under the Indenture for such purpose, DEMEC shall, upon payment or provision for payment of all Bonds being made as provided in the Indenture, pay the Project Participant, as an adjustment for overpayments of its share of Monthly Power Costs, an amount equal to its share of the amount of the excess credit.

### **SECTION 14. Project Participant Covenants.**

(a) Subject to the limitation of liability set forth in Section 4(g), the Project Participant agrees, in accordance with Prudent Utility Practice (1) to maintain its electric utility system in good repair and operating condition; (2) at all times operate its electric utility system and the business thereof in an efficient manner; (3) to cooperate with DEMEC in the performance of the respective obligations of such Project Participant and DEMEC under this Power Sales Contract; and (4) to establish, levy and collect rents, rates and other charges for the products and services provided by its electric utility system, which rents, rates, and other charges shall be at least sufficient (i) to meet the operation and maintenance expenses of such electric utility system, (ii) to comply with all covenants pertaining thereto contained in, and all other provisions of, any resolution, trust indenture, or other security agreement relating to any bonds or other evidence of indebtedness issued or to be issued by the Project Participant, (iii) to generate funds sufficient to fulfill the terms of all other contracts and agreements made by the Project Participant, including, without limitation, this Power Sales Contract, and (iv) to pay all other amounts payable from or constituting a lien or charge on the revenues of its electric utility system.

(b) The Project Participant further agrees that it will not take any action, except as permitted by Section 28(c) hereof, which will lead to its withdrawal as a member of DEMEC or other termination of its membership in DEMEC during the term of this Power Sales Contract and that it will not vote for or otherwise participate in any action to dissolve or otherwise terminate the existence of DEMEC during the term of this Power Sales Contract.

(c) (1) The Project Participant shall not use or permit to be used any of the Electric Energy acquired under this Power Sales Contract or operate its system in any manner or for any purpose or take or omit to take any action which could, either alone or in conjunction with any other similar actions by the Project Participant or other Project Participants, result in loss of the exclusion from gross income for federal income tax purposes of the interest on any Bond or Bonds theretofore issued or thereafter issuable by DEMEC as tax exempt obligations pursuant to the provisions of the Internal Revenue Code of 1986, as amended, and applicable regulations and rulings thereunder.

(2) At the time of execution of this Power Sales Contract, the Project Participant has no contracts and has no current expectation of entering into any contracts whereby any person, corporation, partnership or other non-governmental entity agrees to purchase electric service from the Project Participant on a basis different from that on which the Project Participant provides electric service to the public generally, except as shown on Annex 3 hereto. At least sixty (60) days prior to entering into any contract whereby any person, corporation, partnership or other nongovernmental entity agrees to purchase electric service from the Project Participant on a basis different from that on which the Project Participant provides electric service to the public generally, the Project Participant shall notify DEMEC of its intent to enter into such contract and provide copies of such contract to DEMEC. Within sixty (60) days after receipt of such notice, DEMEC shall advise the Project Participant as to whether, in the opinion of counsel of recognized standing in the field of law relating to municipal bonds selected by DEMEC, the entering into of such contract would result in a violation of the covenant in clause (1) above. The cost of such opinion and other reports necessary in connection therewith

shall be borne by the Project Participant. Any determination by DEMEC that any such contract would violate the covenant set forth in clause (1) above shall be made by DEMEC based upon the aforementioned opinion and such other reports as DEMEC deems necessary. In the event that allocations are necessary to determine whether entering into any such contract violates the covenant set forth in clause (1) above, DEMEC shall make such allocations, in its sole discretion, after receipt of an opinion of counsel of recognized standing in the field of law relating to municipal bonds selected by DEMEC and other reports necessary in connection therewith and paid for by the Participant.

#### **SECTION 15. Operation and Maintenance.**

DEMEC covenants and agrees that it will use its best efforts to operate, maintain and manage the Project or cause the same to be operated, maintained and managed in an efficient and economical manner, and at all times in accordance with Prudent Utility Practices.

#### **SECTION 16. Pledge of Payments.**

All right, title and interest of DEMEC in, to and under this Power Sales Contract and all payments required to be made by the Project Participant pursuant to the provisions of Section 4 hereof, and all other payments attributable to the Project to be made in accordance with or pursuant to any other provision of this Power Sales Contract, shall be pledged, subject to application in accordance with the provisions of the Indenture, to secure the payment of Bonds.

#### **SECTION 17. Event of Default.**

Failure of the Project Participant to make to DEMEC when due any of the payments for which provision is made in this Power Sales Contract shall constitute an immediate default on the part of the Project Participant.

#### **SECTION 18. Continuing Obligation, Right to Discontinue Service.**

In the event of any default referred to in Section 17 hereof, the Project Participant shall not be relieved of its liability for payment of the amounts in default and DEMEC shall have the right to recover from the Project Participant any amount in default. In enforcement of any such right of recovery, DEMEC may bring any suit, action, or proceeding available to it in law or in equity, including mandamus, injunction, specific performance, declaratory judgment, or any combination thereof, as may be necessary or appropriate to enforce any covenant, agreement or obligation to make any payment for which provision is made in this Power Sales Contract against the Project Participant, and DEMEC may, upon thirty days written notice to the Project Participant, cease and discontinue, either permanently or on a temporary basis, providing all or any portion of the Project Participant's Power Entitlement Share or Transmission Services.

#### **SECTION 19. Transfer of Power Entitlement Shares Following Default.**

In the event of a default by any Project Participant pursuant to Section 17 and permanent discontinuance of service pursuant to Section 18 of such Project Participant's Power Sales

Contract, DEMEC is hereby appointed the agent of such Project Participant for the purpose of disposing of such Project Participant's Power Entitlement Share and as such agent, DEMEC shall proceed to dispose of such defaulting Project Participant's Power Entitlement Share as follows:

(a) DEMEC shall first offer to transfer to all other nondefaulting Project Participants a pro rata portion of the defaulting Project Participant's Power Entitlement Share which shall have been discontinued by reason of such default. Any part of such Power Entitlement Share of a defaulting Project Participant which shall be declined by any nondefaulting Project Participant shall be reoffered pro rata to the nondefaulting Project Participants which have accepted in full the first such offer; such reoffering shall be repeated until such defaulting Project Participant's Power Entitlement Share has been reallocated in full or until all nondefaulting Project Participants have declined to take any portion or additional portion of such defaulting Project Participant's Power Entitlement Share.

(b) In the event less than all of a defaulting Project Participant's Power Entitlement Share shall be accepted by the other nondefaulting Project Participants pursuant to clause (a), DEMEC shall, to the extent permitted by law, use its reasonable best efforts to sell the remaining portion of a defaulting Project Participant's Power Entitlement Share for the remaining term of such defaulting Project Participant's Power Sales Contract with DEMEC. The agreement for such sale shall contain such terms and conditions as will not adversely affect the security for the Bonds afforded by the Power Sales Contract of such defaulting Project Participant, including provisions for discontinuance of service upon default, and as are otherwise acceptable to DEMEC; in the event of default and discontinuance of service under such agreement, the Power Entitlement Share sold pursuant to such agreement shall be offered and transferred as provided for defaulting Project Participants in this Section 19.

(c) In the event less than all of a defaulting Project Participant's Power Entitlement Share shall be accepted by the nondefaulting Project Participants pursuant to clause (a) or sold pursuant to clause (b) of this Section, DEMEC shall transfer, on a pro rata basis (based on original Power Entitlement Share), to all other Project Participants which are not in default, the remaining portion of such defaulting Project Participant's Power Entitlement Share; provided, however, that in no event shall any transfer of any part of a defaulting Project Participant's Power Entitlement Share pursuant to clause (c) of this Section result in a transferee Project Participant having a Power Entitlement Share (including transfers to such transferee Project Participant pursuant to clause (a) of this Section) in excess of 125% of its original Power Entitlement Share.

(d) Any portion of the Power Entitlement Share of a defaulting Project Participant transferred pursuant to this Section to a nondefaulting Project Participant shall become a part of and shall be added to the Power Entitlement Share of each transferee Project Participant, and the transferee Project Participant shall be obligated to pay for its Power Entitlement Share increased as aforesaid, as if the Power Entitlement Share of the transferee Project Participant, increased as aforesaid, had been stated originally as the Power Entitlement Share of the transferee Project Participant in its Power Sales Contract with DEMEC.

(e) In the event less than all of a defaulting Project Participant's Power Entitlement Share shall be sold or transferred pursuant to the foregoing clauses of this Section 19, DEMEC

shall, to the extent permitted by law, use its reasonable best efforts to sell the remaining portion of a defaulting Project Participant's Power Entitlement Share or the Electric Capacity and Electric Energy or the energy associated therewith on such terms and conditions as are acceptable to DEMEC; provided, however, that no such sale shall be made if it adversely affects the federal tax exemption of the Bonds.

The defaulting Project Participant shall remain liable for all payments to be made on its part pursuant to the Power Sales Contract, except that the obligation of the defaulting Project Participant to pay DEMEC shall be reduced to the extent that payments shall be received by DEMEC for that portion of the defaulting Project Participant's Power Entitlement Share which may be transferred or sold or for the Electric Energy associated therewith which may be sold as provided in clauses (a), (b), (c) or (e) of this Section 19.

#### **SECTION 20. Other Default by Project Participant.**

In the event of any default by the Project Participant under any other covenant, agreement or obligation of this Power Sales Contract, other than Section 17 hereof, DEMEC may bring any suit, action, or proceeding available to it in law or in equity, including mandamus, injunction, specific performance, declaratory judgment, or any combination thereof, as may be necessary or appropriate to enforce any covenant, agreement or obligation of this Power Sales Contract against the Project Participant. Such remedies shall be in addition to all other remedies provided for herein.

#### **SECTION 21. Default by DEMEC.**

In the event of any default by DEMEC under any covenant, agreement or obligation of this Power Sales Contract, the Project Participant's remedy for such default shall be limited to mandamus, injunction, action for specific performance or any other available equitable remedy designed to enforce any covenant, obligation or agreement of DEMEC hereunder as may be necessary or appropriate. DEMEC hereby acknowledges that any default under this Power Sales Contract would cause irreparable harm and injury to the Project Participant for which monetary damages at law would be an inadequate remedy, and DEMEC hereby agrees to submit to the jurisdiction of the Delaware Court of Chancery for the purposes of being enjoined to specifically perform its obligations under the Power Sales Contract upon the Court's determination of a default.

#### **SECTION 22. Abandonment of Remedy.**

In case any proceeding taken on account of any default shall have been discontinued or abandoned (whether by settlement, release, dismissal or otherwise) for any reason, the parties to such proceedings shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of DEMEC and the Project Participant shall continue as though no such proceedings had been taken.

#### **SECTION 23. Waiver of Default.**

Any waiver at any time by either DEMEC or the Project Participant of its rights with respect to any default of the other party hereto, or with respect to any other matter arising in connection with this Power Sales Contract, shall not be a waiver with respect to any subsequent default, right or matter.

#### **SECTION 24. Relationship to and Compliance with Other Instruments.**

(a) It is recognized by the parties hereto that DEMEC, in undertaking, or causing to be undertaken, the planning, financing, construction, acquisition, operation and maintenance of the Project, must comply with the requirements of the Indenture and all licenses, permits and regulatory approvals necessary therefor, and it is therefore agreed that the performance of DEMEC under this Power Sales Contract is made subject to the terms and provisions of the Indenture and all such licenses, permits and regulatory approvals.

(b) DEMEC covenants and agrees to use its best efforts for the benefit of the Project Participant to comply in all material respects with all terms, conditions and covenants of the Indenture and all licenses, permits and regulatory approvals relating thereto.

#### **SECTION 25. Measurement of Electric Energy.**

(a) DEMEC will install, maintain, and operate the metering equipment required to measure the quantities of Electric Energy produced and delivered from the Project. DEMEC shall have the option of metering at a location other than the Project, in which event the measurements shall be appropriately adjusted for losses. At least once in each Contract Year DEMEC will make or cause to be made such tests and inspections of DEMEC's meters as may be necessary to maintain them at the highest practical commercial standard of accuracy. Each meter used pursuant to this subsection 25(a) shall be tested and calibrated.

(b) DEMEC reserves the right to provide for installation of meters and will provide or cause to be provided all necessary metering equipment for determining the quantity and conditions of the supply of Electric Capacity and Electric Energy delivered by DEMEC to the Project Participant's Point of Delivery under this Power Sales Contract; provided, however, that the Project Participant may at its own cost install additional metering equipment. The Project Participant shall supply without cost to DEMEC a suitable place for installing DEMEC's metering equipment at the Project Participant's Point of Delivery.

If any meter installed by DEMEC under this subparagraph (b) fails to register or is found to be inaccurate, DEMEC shall repair or replace such meter or cause it to be repaired or replaced, and an appropriate billing shall be made to the Project Participant by DEMEC based upon the best information available for the period, not exceeding sixty (60) days, during which no metering occurred. Any meter tested and found to be no more than two percent above or below normal shall be considered accurate insofar as correction of billings is concerned. If, as a result of any test, a meter is found to register in excess of two percent above or below normal, then the reading of such meter previously taken for billing purposes shall be corrected for the period during which it is established the meter was inaccurate, but no correction shall be made for any period beyond sixty days prior to the date on which the meter test was requested.

## **SECTION 26. Liability of Parties.**

DEMEC and the Project Participant shall assume full responsibility and liability for the maintenance and operation of their respective properties and each shall indemnify and save harmless the other from all liability and expense on account of any and all damages, claims, or actions, including injury to or death of persons arising from any act or accident in connection with the installation, presence, maintenance and operation of the property and equipment of the indemnifying party and not caused by the negligence of the other party; provided that any liability which is incurred by DEMEC through the operation and maintenance of the Project and not covered, or not covered sufficiently, by insurance shall be paid solely from the revenues of DEMEC derived from the Project, and any payments made by DEMEC, or which DEMEC is obligated to make, to satisfy such liability shall become part of Monthly Power Costs or the Cost of Project, or a combination thereof, or Monthly Transmission Costs, as appropriate.

## **SECTION 27. Sale of Excess Project Participant's Power Entitlement Share.**

In the event the Project Participant shall determine that all or any part of the Electric Capacity or Electric Energy which can be produced from the Project Participant's Power Entitlement Share are in excess of the requirements of the Project Participant, at the written request of the Project Participant, DEMEC shall use its best efforts to sell and transfer on behalf of such Project Participant for any period of time all or any part of such excess Electric Capacity or Electric Energy to such other Project Participant or Participants as shall agree to take such excess capacity or energy at such prices as may be agreed to, provided, however, that in the event the other Project Participants do not agree to take the entire amount of such excess, DEMEC shall have the right, to the extent permitted by law, to dispose of such excess to other purchasers; provided further that any sale to a non-governmental purchaser may be made only if DEMEC determines that such sale shall not adversely affect the federal tax exemption of the Bonds. If all or any portion of such excess of the Project Participant's Power Entitlement Share is sold pursuant to this Section 27, the Project Participant's Power Entitlement Share shall not be reduced, and the Project Participant shall remain liable to DEMEC to pay the full amount due as if such sale had not been made; except that such liability shall be discharged to the extent that DEMEC shall receive payment for such excess from the purchaser or purchasers thereof and that any amounts received by DEMEC as payment for such excess which is greater than the liability owed by the Project Participant to DEMEC in respect of such excess shall be promptly paid by DEMEC to the Project Participant.

## **SECTION 28. Assignment of Power Sales Contract; Sale of Project Participant's System.**

(a) This Power Sales Contract shall inure to the benefit of and shall be binding upon the respective successors and permitted assigns of the parties to this Power Sales Contract; provided, however, that, except as provided in Section 19 hereof in the event of a default and except for the assignment and pledge authorized by paragraph (b) of this Section 28 and for the assignments authorized by paragraph (c) of this Section 28, neither this Power Sales Contract nor any interest herein shall be transferred or assigned by either party hereto except with the consent



in writing of the other party hereto, which consent shall not be unreasonably withheld. No assignment or transfer of this Power Sales Contract shall relieve the parties of any obligation hereunder.

(b) The Project Participant acknowledges and agrees that DEMEC may assign and pledge to the Trustee, all its right, title, and interest in, to and under this Power Sales Contract and all payments to be made to DEMEC under the provisions of this Power Sales Contract as security for the payment of the principal (including sinking fund installments) of, premium, if any, and interest on Bonds and may deliver possession of this Power Sales Contract to such Trustee in connection therewith, and, upon such assignment and pledge, DEMEC may grant to such Trustee any rights and remedies herein provided to DEMEC, and thereupon any reference herein to DEMEC shall be deemed, with the necessary changes in detail, to include such trustee which shall be a third party beneficiary of the covenants and agreements of the Project Participant herein contained.

(c) The Project Participant agrees that it will not sell, lease, abandon or otherwise dispose of all or substantially all of its electric utility system except upon ninety (90) days prior written notice to DEMEC and, in any event, will not sell, lease, abandon or otherwise dispose of the same unless the following conditions are met: (i) the Project Participant shall assign this Power Sales Contract and its rights and interest hereunder to the purchaser or lessee of said electric system, if any, and any such purchaser or lessee shall assume all obligations of the Project Participant under this Power Sales Contract; (ii) DEMEC shall be permitted by then applicable law to sell Electric Capacity and Electric Energy to said purchaser or lessee, if any; and (iii) DEMEC shall by appropriate action determine, in its sole discretion, that such sale, lease, abandonment or other disposition will not materially adversely affect the value of this Power Sales Contract as security for the payment of Bonds and interest thereon or affect the eligibility of interest on Bonds then outstanding or which could be issued in the future for federal tax-exempt status.

## **SECTION 29. Termination or Amendment of Contract.**

(a) This Power Sales Contract shall not be terminated by either party under any circumstances, whether based upon the default of the other party under this Power Sales Contract or any other instrument or otherwise except as specifically provided in this Power Sales Contract.

(b) This Power Sales Contract shall not be terminated, amended, modified, or otherwise altered in any manner that will materially adversely affect the security for the Bonds afforded by the provisions of this Power Sales Contract upon which the owners from time to time of the Bonds should have relied as an inducement to purchase and hold the Bonds. So long as any of the Bonds are outstanding or until adequate provisions for the payment thereof have been made in accordance with the provisions of the Indenture, this Power Sales Contract shall not be terminated, amended, modified, or otherwise altered in any manner which will reduce the payments pledged as security for the Bonds or extend the time of such payments provided herein or which will in any manner impair or materially adversely affect the rights of the owners from time to time of the Bonds. This Power Sales Contract may be amended to incorporate any

modification requested by a rating agency or bond insurance company in connection with the rating or insuring, respectively, of any of the Bonds.

(c) No Power Sales Contract entered into between DEMEC and another Project Participant may be amended so as to provide terms and conditions different from those herein contained except upon written notice to and written consent or waiver by each of the other Project Participants, and upon similar amendment being made to the Power Sales Contract of any other Project Participants requesting such amendment after receipt by such Project Participant of notice of such amendment.

### **SECTION 30. Notice and Computation of Time.**

Any notice or demand by the Project Participant to DEMEC under this Power Sales Contract shall be deemed properly given if mailed, certified mail, postage prepaid, return receipt requested or if given by overnight delivery or if given by confirmed facsimile transmission, and addressed to DEMEC at its operational office; any notice or demand by DEMEC to the Project Participant under this Power Sales Contract shall be deemed properly given if mailed, certified mail, postage prepaid return receipt requested, or if given by overnight delivery or if given by confirmed facsimile transmission, and addressed to the Project Participant at the address set forth on Annex 1 hereto; in computing any period of time from such notice, such period shall commence at noon on the date mailed. The designations of the name and address to which any such notice or demand is directed may be changed at any time and from time to time by either party giving notice as above provided.

### **SECTION 31. Applicable Law; Construction.**

This Power Sales Contract is made under and shall be governed by the laws of the State of Delaware. Headings herein are for convenience only and shall not influence the construction hereof.

### **SECTION 32. Severability.**

If any section, paragraph, clause or provision of this Power Sales Contract shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Power Sales Contract shall remain in full force and effect as though such section, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not been included herein. In the event that any provision of this Power Sales Contract is held to be invalid or unenforceable, the parties hereto will negotiate in good faith to formulate a substitute provision that preserves the overall substance of the business deal.

### **SECTION 33. Miscellaneous.**

This Power Sales Contract and the Annexes hereto embody the entire agreement and understanding of the parties and supersede any and all prior agreements, arrangements and understandings relating to matters provided for herein. The captions used herein are for convenience only and shall not control or affect the meaning or construction of the provisions of

this Power Sales Contract. This Power Sales Contract may be executed in or more counterparts, and all such counterparts shall constitute one and the same instrument. This Power Sales Contract may only be amended by a written instrument signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Power Sales Contract to be executed by their proper officers respectively, being thereunto duly authorized, and their respective seals to be hereto affixed, as of the day and year first above written.

DELAWARE MUNICIPAL ELECTRIC  
CORPORATION

(SEAL)

Attest:

By: \_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

CITY OF NEWARK

(SEAL)

Attest:

By: \_\_\_\_\_  
Title:

\_\_\_\_\_  
Title: